

# Appeal Decision

by [REDACTED] MRICS

**an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as Amended)**

Valuation Office Agency  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW

Email: [REDACTED]@voa.gov.uk

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**Appeal Ref: 1860756**

**Address** [REDACTED]

***Proposed Development: Residential Development of Approximately 120 Dwellings, including up to 40% Affordable Housing, Open Space, Landscaping, Drainage Features and Associated Infrastructure with all Matters Reserved, Except Access,***

***Reserved Matters Application for Appearance, Landscaping, Layout and Scale for the Erection of 120no. Dwellings pursuant to Outline Planning Permission*** [REDACTED]

***Planning permission: Outline Permission*** [REDACTED] ***granted by*** [REDACTED] ***on*** [REDACTED] .  
***Reserved Matters Application*** [REDACTED] ***permitted on*** [REDACTED]

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## Decision

I determine that the Community Infrastructure Levy (CIL) chargeable amount in this case should be £ [REDACTED] ([REDACTED]).

## Background

1. I have considered all of the submissions made by [REDACTED] on behalf of [REDACTED] (the Appellant) and [REDACTED] (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

- a. The Decision Notice issued by [REDACTED] in respect of outline permission [REDACTED] on [REDACTED].
- b. The Decision Notice issued by [REDACTED] in respect of reserved matters application [REDACTED] on [REDACTED].

- b. The CIL Liability Notice (reference [REDACTED]) issued by the CA on [REDACTED].
  - c. The appellant's request to the CA for a regulation 113 review dated [REDACTED].
  - d. The CA's regulation 113 decision e-mailed to the appellant on [REDACTED].
  - e. The CIL Appeal form dated [REDACTED] submitted on behalf of the appellant under Regulation 114, together with documents and correspondence attached thereto.
  - f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].
  - g. The appellant's comments on the CA's representations received by the Valuation Office Agency (VOA) on [REDACTED].
2. Outline permission [REDACTED] was granted on [REDACTED] for the proposed development detailed above. This permission did not provide for phasing of the development and from the submissions provided, I understand that a Reserved Matters Approval was previously granted in [REDACTED] ([REDACTED]) before [REDACTED] was approved in [REDACTED] [REDACTED] pertaining to the Landscape, Scale, Layout and Appearance of the Outline Planning Permission.
  3. I am not aware of any earlier CIL Liability Notices having been issued. [REDACTED] was issued by [REDACTED] on [REDACTED] and is the subject of this appeal. This notice states a CIL liability of £[REDACTED] ([REDACTED]). The liability is based upon a chargeable rate of £[REDACTED] per square metre (sq. m.) and [REDACTED] sq. m of chargeable floor area. Indexation for the year in which planning permission was granted (IP) has been adopted at [REDACTED] and indexation for the year in which the charging schedule started operation (IC) has been adopted at [REDACTED]. This produces a charge of £[REDACTED] [REDACTED] from which £[REDACTED] of social housing relief has been deducted leaving a liability of £[REDACTED].
  4. On [REDACTED], the appellant wrote to the CA requesting a review of the calculation of the chargeable amount pursuant to regulation 113 of the CIL Regulations. The letter sets out the appellant's view that the IP index date was incorrect and that it should have been the date of the outline planning permission used to inform IP rather than the date of the approval of the reserved matters application.
  6. The CA issued their regulation 113 decision on [REDACTED], maintaining that their calculation of the CIL liability was correct.
  7. Consequently, on [REDACTED], the appellant submitted a regulation 114 (chargeable amount) appeal to the VOA for determination.

## Grounds of Appeal

8. The grounds of the appeal are that the chargeable amount set out in the liability notice dated [REDACTED] has been calculated incorrectly. The appellant is of the view that the indexation factor IP applied is incorrect. The appellant opines that, *"when it comes to indexation calculation in paragraph (4) of Schedule 1 of the Regulations it is the year of the Outline Planning Permission that fixes the index figure and not the year planning permission first permits*

*which would be the date of the Reserved Matters Application.”* The appellant therefore contends that the correct value of IP should be [REDACTED].

9. In its calculation of the chargeable amount, the CA has used an indexation figure based on the date on which the reserved matters application was approved giving IP a value of [REDACTED].
10. There are no disputes concerning the adopted rates for the charging rate, Gross Internal Area (GIA) or indexation for the calendar year in which the charging schedule took effect.
11. The appeal turns on whether the value for IP should be that for the year when the outline permission was granted as opined by the appellant, or that for the year when the reserved matters application was approved as argued by the CA.

## **Reasoning**

12. The relevant regulations are set out below:-

### *Regulation 5 – Meaning of Planning Permission*

- (1) *For the purposes of Part 11 of PA 2008, “planning permission” means –*
  - a) *Planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA1990(a);”*

### *Regulation 8 – Time at which planning permission first permits development*

- (1) *This regulation has the effect for determining the time at which planning permission is treated as first permitting development for the purposes of Part 11 of PA 2008.*
- (2) *Planning permission first permits development on the day that planning permission is granted for that development.*
- (3) *In the case of a grant of outline planning permission which is not phased planning permission, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission.”*

### *Regulation 9 – Meaning of Chargeable Development*

- (1) *The chargeable development is the development for which planning permission is granted.*

### *Schedule 1 Regulations 40 and 50 – Chargeable amount standard cases*

- (4) *The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula-*

$$\frac{R \times A \times I_p}{I_c}$$

Where –

*A* = the deemed net chargeable area at rate *R*, calculated in accordance with subparagraph (6);

*IP* = the index figure for the calendar year in which planning permission was granted;

and

*IC* = the index figure for the calendar year in which the charging schedule *R* took effect.

(5) In this paragraph the index figure for a given calendar year is—

(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;

(c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(d) if the national All-in Tender Price Index is not so published, the figure for 1<sup>st</sup> November for the preceding calendar year in the retail prices index.

13. The appellant highlights that a reserved matters application is not a planning permission as defined by Regulation 5 and I agree. In contrast, an outline permission falls under S. 70 (1A) Town and Country Planning Act 1990 and does fulfil the definition.
14. Therefore, the chargeable development is the development granted consent by the outline permission in accordance with Regulation 9.
15. In accordance with Regulation 8, as this case involves an outline permission that is not phased, the date planning permission first permits the development will be the [REDACTED] when the reserved matters were approved.
16. The appellant notes that whilst the date of the relevant charging schedule and consequently the value of *IC* is determined by having reference to the relevant charging schedule that is in effect, “(i) at the time planning permission first permits the chargeable development.” i.e. the [REDACTED], the value of *IP* is the “index figure for the calendar year in which planning permission was granted.” In accordance with the regulations and as explained above, planning permission was granted on the [REDACTED], but it was not until the approval of the reserved matters on the [REDACTED], that it was permitted.
17. The appellant questions why Schedule 1 Part 1(2). “chargeable amount: outline permissions where first permits date is after new charging schedule” exists if an outline permission is not a chargeable development? The appellant considers this part of the regulations supports their view that the outline permission is indeed the chargeable development rather than the reserved matters application and I agree. This part of Schedule 1 further supports the

differentiation between the granting of outline permission and it being later permitted.

18. I have considered the representations made by the CA and I concur with the appellant, the CA is incorrectly seeking to rely upon previous legal advice pertaining to a phased outline development. The subject permission is not a phased permission and as such Regulation 9 (4) *"in the case of a grant of phased planning permission, each phase of the development is a separate chargeable development."* does not apply.
19. The CA is correct, the development cannot take place following the granting of an outline permission in isolation, it requires the approval of the reserved matters to permit the development. However, the CA have overlooked the use of the words *grant* and *permit* when interpreting the regulations in respect of calculating the chargeable amount and as such have erred in their calculation. This error seems to stem from their view that the outline permission is not the chargeable development. In accordance with regulation 9, the outline permission is the chargeable development as it is the planning permission. A reserved matters application is not a planning permission but it permits the chargeable development to be carried out which the granting of the outline permission alone, does not.

## Decision

20. Having fully considered the representations made by the appellant and the CA it is my decision that the Regulations at Schedule 1 Part 1. (5) clearly state that IP is to be the index figure *for the year in which planning permission was granted*, which in respect of this chargeable development will be the date of the outline consent.
21. The regulations clearly use the words grant and permit for different purposes and the use of these is intentional.
22. (5) (b) of Schedule 1 states that, *"in relation to any calendar year before 2020, the figure for 1<sup>st</sup> November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;"* Having checked this index, I conclude that indexation of [REDACTED] should be adopted for IP. In terms of IC, both parties agree that indexation of [REDACTED] should be adopted.
23. This is a chargeable amount appeal and as such is calculated in accordance with Schedule 1. The amount determined is pre any reliefs and that remains a matter between the appellant and CA, falling outside the scope of this appeal.
24. On the evidence before me, having regard to the particular facts of this case, I conclude that the Schedule 1 chargeable amount calculation should be carried adopting the following values:  
R = £ [REDACTED]  
A = [REDACTED] sq. m.  
IP = [REDACTED]  
IC= [REDACTED]

$$\frac{\pounds \blacksquare \times \blacksquare}{\blacksquare} \times \blacksquare = \pounds \blacksquare$$

25. I determine the chargeable amount to be £ $\blacksquare$  ( $\blacksquare$ ) and uphold this appeal

$\blacksquare$  MRICS  
RICS Registered Valuer  
Valuation Office Agency  
09 May 2025